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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/781,491

02/13/2001

Dallas L. Clouatre

8229

7590

06/05/2002

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EXAMINER

JONES, DWAYNE C

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 06/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/781,491

Applicant(s)

CLOUATRE ET AL.

Examiner

Dwayne C Jones

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 MAR 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Claims***

1. Claims 1-18 are pending.
2. Claims 1-18 are rejected.

### ***Response to Arguments***

3. Applicant's arguments filed March 5, 2002 have been fully considered but they are not persuasive with respect to Shrivastava et al. and Littera. First, applicants argue that Shrivastava et al. is directed to using magnesium for which (-)-hydroxycitric acid happens to be a ligand rather than for using (-)-hydroxycitric acid to treat hypertension. Second, applicants state that Littera differs from the instant invention because Littera includes chitosan and chromium whereas the instant invention does not.

4. Applicants allege that Shrivastava et al. is directed to using magnesium for which (-)-hydroxycitric acid happens to be a ligand rather than for using (-)-hydroxycitric acid to treat hypertension. This allegation is unfounded and unpersuasive. Shrivastava et al. is directed to "(-)-hydroxycitrate, namely magnesium (-)-hydroxycitrate", (see column 2, lines 9-11). Shrivastava et al. also disclose that (-)-hydroxycitrate has very useful pharmacological properties, such as hypolipemia, anticholesterol, as well as antihypertensive properties, (see column 2, lines 34-48). It is further pointed by Shrivastava et al. that their invention is relates to (-)-hydroxycitrate, (column 1, lines 13-16). Under the Background of the Invention, Shrivastava et al. recite numerous properties, which are endowed to (-)-hydroxycitrate, (cited from column 1, line 13 to

Art Unit: 1614

column 2, line 6). It could not be more clear from reading the Shrivastava et al., in particular from column 1, line 13 to column 2, line 6, that their invention is most certainly directed to therapeutic uses of (-)-hydroxycitrate along with its pharmacologically acceptable salts, as is the instantly claimed invention. Moreover, Shrivastava et al. teach of using (-)-hydroxycitrate to treat, inter alia, hypertension, (see column 2, lines 34-48 and 52-63). Accordingly, the instant invention is clearly anticipated and rendered obvious by the prior art reference of Shrivastava et al.

5. Applicants next state that Littera differs from the instant invention because Littera includes chitosan and chromium whereas the instant invention does not. However, it is pointed out that applicants' claims are directed to a method of treating hypertension with a composition, which is comprised of (-)-hydroxycitrate. Moreover, the invention disclosed by Littera teaches of a composition, which also treats hypertension by employing the use of a composition, which also includes (-)-hydroxycitrate. With respect to Applicants' arguments that the claimed methods do not require additional ingredients such as chromium or chitosan, Applicants' claims recite the word "comprising", which is open-claim language. It is held that "the word 'comprising' incorporates additional steps of procedures and does not exclude materials or processes not recited in the claim", see *Gould v. Mossinghoff, Comr. Pats.*, (DCCD 1982) 215 USPQ 310.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. The rejection of claims 1-18 under 35 U.S.C. 102(b) as being clearly anticipated by Shrivastava et al. is sustained, see rationale in paragraph No. 4 of this Office action as well as the previously filed Office Action of January 31, 2002.

8. The rejection of claims 1-4, 7, 9, 12 and 14 under 35 U.S.C. 102(b) as being clearly anticipated by Littera is sustained, see rationale in paragraph No. 5 of this Office action as well as the previously filed Office Action of January 31, 2002.

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. The rejection of claims 1-18 under 35 U.S.C. 103(a) as being unpatentable over Shrivastava et al. of U.S. Patent No. 6,221,901 for both the above-stated and reasons of record.

11. The rejection of claims 1-18 under 35 U.S.C. 103(a) as being unpatentable over Hastings et al. of U.S. Patent No. 5,626,849 is withdrawn.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1614

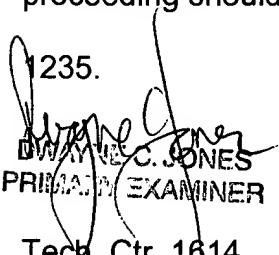
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (703) 308-4634. The examiner can normally be reached on Mondays through Fridays from 8:30 am to 6:00 pm. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1235.

  
DWAYNE C. JONES  
PRIMARY EXAMINER

Tech. Ctr. 1614  
June 3, 2002